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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 John Clark Buchanan, II,
10 Plaintiff,
11 v.
12 Randhir Gandhi, et al.,
13 Defendants.
14

No. CV-22-01482-PHX-SMB

ORDER

15 Pending before the Court is Plaintiff's Amended Emergency Motion for
16 Temporary Restraining Order (Doc. 59). Plaintiff's Motion was denied on an ex-parte
17 basis and the Court ordered a response and set a hearing. Defendants filed a response
18 (Doc. 68), and a hearing was held on September 14, 2023.

19 **I. BACKGROUND**

20 This is Plaintiff's third request for a temporary restraining order. The first was
21 denied on November 18, 2022 and the second was denied on August 11, 2023. Plaintiff
22 filed his third request on August 14, 2023.

23 On July 26, 2005, Plaintiff and Bank of America, N.A. ("BANA") executed a
24 Promissory Note titled "Bank of America Equity Maximizer Agreement and Disclosure
25 Statement" ("Loan Agreement"), which detailed Plaintiff's \$150,000 credit line to
26 purchase the property in question. (See Docs. 9 at 3; 9-1 at 2–3, 9.) The Promissory
27 Note was secured by a Deed of Trust. (Docs. 9 at 3; 9-2 at 7.) The Deed of Trust was
28 signed by Plaintiff and Theresa Buchanan. (Docs. 9 at 3; 9-2 at 2.) On August 15, 2005,

1 the Deed was recorded in the Pinal County Recorder's Office as Instrument No. 2005-
 2 104177. (Docs. 9 at 3; 9-2 at 2.) BANA executed a Notice of Substitution of Trustee on
 3 August 10, 2016, naming Quality Loan Service Corporation as the Substitute Trustee
 4 under the Deed of Trust. (Docs. 9 at 3; 9-3 at 2.) BANA recorded the Notice of
 5 Substitution of Trustee with the Pinal County Recorder's Office. (Docs. 9 at 3; 9-3 at 2.)
 6 On December 27, 2019, BANA assigned all interests in the property to the beneficiary
 7 through its servicing agent, Defendant Select Portfolio Servicing, Inc. ("SPS"). (Docs. 9
 8 at 3-4; 9-4 at 2.) Plaintiff made timely payments under the Loan Agreement for eleven
 9 years, ceased making regular and timely payments in 2016, and stopped making
 10 payments entirely in 2017. (See Doc. 54 at 17.) Next, Defendants assert that between
 11 2016 and 2021, either BANA or SPS offered loan assistance to Plaintiff. (See Docs. 9 at
 12 4; 9-5; 9-6.) Defendants claim that Plaintiff either failed to provide the necessary
 13 documents or rejected the offers for loan assistance. (Doc. 9 at 4.) Defendants further
 14 claim that BANA and SPS provided notices to Plaintiff regarding potential foreclosure
 15 due to missed payments. (*Id.*) Defendants allege that on November 12, 2019, SPS
 16 delivered a letter to Plaintiff, informing Plaintiff that a foreclosure sale for his property
 17 was scheduled for December 4, 2019. (Doc. 9-6.) Ultimately, the foreclosure sale was
 18 continued for nearly three years, and the property was eventually sold on September 6,
 19 2022. (See Docs. 9-7; 9-8.) In his third attempt, Plaintiff is asking for this Court to
 20 prevent the enforcement of the State Court Forcible Entry and Detainer judgment.

21 II. LEGAL STANDARD

22 A party seeking injunctive relief under Federal Rule of Civil Procedure 65 must
 23 show that: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable
 24 harm in the absence of injunctive relief; (3) the balance of equities tips in his favor; and
 25 (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
 26 7, 20 (2008). Where the movant seeks a mandatory injunction, rather than a prohibitory
 27 injunction, injunctive relief is "subject to heightened scrutiny and should not be issued
 28 unless the facts and law clearly favor the moving party." *Dahl v. HEM Pharms. Corp.*, 7

1 F.3d 1399, 1403 (9th Cir. 1993).

2 Unlike a preliminary injunction, a temporary restraining order (“TRO”) may be
3 entered “without written or oral notice to the adverse party.” Fed. R. Civ. P. 65(b). A
4 TRO may issue *ex parte* if: “(A) specific facts in an affidavit or a verified complaint
5 clearly show that immediate and irreparable injury, loss, or damage will result to the
6 movant before the adverse party can be heard in opposition; and (B) the movant’s
7 attorney certifies in writing any efforts made to give notice and the reasons why it should
8 not be required.” *Id.*

9 **III. DISCUSSION**

10 Plaintiff’s Motion requests the Court to stop or stay Plaintiff’s impending eviction.
11 However, the Court finds that Plaintiff’s claims fail to establish any of the four *Winter*
12 factors for granting a TRO or permanent injunction.

13 **1. Success on Merits**

14 For the Court to grant a TRO, Plaintiff must demonstrate a likelihood of success
15 on the merits. *Winter*, 555 U.S. at 20. Plaintiff has not shown that he is likely to succeed
16 on the merits. Plaintiff argues that he has no contract with the party foreclosing on his
17 property. However, Bank of America properly transferred the debt and assigned its rights
18 under the Deed of Trust to MEB Loan Trust IV (“MEB”). Plaintiff was told that Bank of
19 America could effectuate a transfer and assignment without prior notice under the loan
20 agreement. (Doc. 9-1 at 7) Additionally, the Deed of Trust declares that the “Lender”
21 means Bank of America, N.A., its successors and assigns and the “Trustee” includes any
22 substitute or successor trustees. (Doc. 64 at 16–17) The Deed of Trust further says that
23 in the event of default, “the Trustee shall have the right to foreclose by notice and sale,
24 and Lender shall have the right to foreclose by judicial foreclosure.” (Doc. 64 at 14)
25 Bank of America executed a Notice of Substitution of Trustee on August 10, 2016 that
26 appointed Quality Loan Service Corporation as successor trustee. (Doc. 64 at 20) It was
27 Quality Loan Service Corporation who noticed the foreclosure sale, which is authorized
28 in the Deed of Trust. The first Notice listed Bank of America, N. A. as the beneficiary.

1 The listed beneficiary changed to MEB after Bank of America assigned all its interest
 2 under the Deed of Trust to MEB in 2020. There is no likelihood of success on the merits
 3 of a claim that the party noticing the foreclosure sale was acting without authority. Next,
 4 Plaintiff challenges whether there is a debt owing. However, he pled in his Second
 5 Amended Complaint that he did take out a loan in 2005 and made payments on that loan
 6 until 2017. Plaintiff also seems to be arguing that because his debt was discharged in
 7 bankruptcy, Defendants are prevented from foreclosing. That is incorrect. The discharge
 8 relieves him from the obligation to pay, but the lien holder still has a lien on the real
 9 property and can foreclose. *See Diaz v. BBVA USA*, 504 P.3d 945, 950 (Ariz. Ct. App.
 10 2022).

11 Finally, Plaintiff is challenging the forcible entry and detainer judgment from the
 12 Justice Court. “But this Court cannot act as an appellate court over a state court
 13 proceeding.” *Jewell v. Countrywide Home Loans, Inc.*, No. CV 11-8042-PCT-JAT, 2012
 14 WL 170942, at *3 (D. Ariz. Jan. 20, 2012). The Rooker-Feldman doctrine prohibits this
 15 Court from interfering with the forcible entry and detainer judgment entered by the state
 16 court. *Id.* at *3–4; *see also Busch v. Torres*, 905 F. Supp. 766, 771 (C.D. Cal. 1995)
 17 (“The gravamen of plaintiff’s complaint is a challenge to the state court judgment in the
 18 unlawful detainer action and the subsequent enforcement of the judgment through the
 19 writ of possession. Under the Rooker-Feldman doctrine, this Court is precluded from
 20 reviewing that judgment and its execution.”). The Court finds that Plaintiff has not
 21 shown a likelihood of success on the merits.

22 **2. Irreparable Harm**

23 Plaintiff argues there is irreparable harm because he has to have shoulder surgery
 24 and has other health problems. However, there is no risk if irreparable harm where no
 25 writ of restitution has issued commanding the Sheriff to remove Plaintiff.

26 **3. Balance of Equities**

27 To satisfy factor three of the *Winter* test, the balance of hardships must tip sharply
 28 in Plaintiff’s favor. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1133 (9th Cir.

1 2011). Plaintiff fails to demonstrate this. As Defendants point out, between 2016 and
2 2021, Plaintiff was repeatedly contacted with offers for loan payment assistance by both
3 BANA and SPS. (Doc. 9 at 11.) It was not until 2022 that Plaintiff faced a foreclosure
4 sale and eviction. As discussed above, Plaintiff fails to cite legal authority or articulable
5 facts demonstrating any viable claim for unlawfulness on behalf of the Defendants or the
6 property's foreclosure. Plaintiff thus does not satisfy factor three.

7 **4. Public Interest**

8 “The public interest inquiry primarily addresses impact on non-parties rather than
9 parties, and takes into consideration the public consequences in employing the
10 extraordinary remedy of injunction.” *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180,
11 1202 (9th Cir. 2022) (cleaned up). Here, Plaintiff has failed to articulate facts or legal
12 authority that supports a likelihood that Defendants acted under an invalid Loan
13 Agreement, Deed of Trust, or secured interest in the property. In contrast, Defendants
14 have provided documents, factual allegations, and legal authority to support the
15 lawfulness of the foreclosure sale—as well as nearly five years of collective efforts to
16 provide Plaintiff with loan repayment assistance opportunities. Courts will not find that a
17 TRO is in the public interest when “it would shield debtors from the agreed-upon
18 repercussions of a failure to repay debt.” *Karam v. Specialized Loan Servicing LLC*, No.
19 CV-22-00029-TUC-RCC, 2022 WL 2439220, at *2 (D. Ariz. July 5, 2022). Plaintiff has
20 not satisfied factor four.

21 **IV. CONCLUSION**

22 **IT IS ORDERED** denying Plaintiff's Amended Emergency Motion for
23 Temporary Restraining Order (Doc. 59).

24 Dated this 20th day of September, 2023.

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27 
28 Honorable Susan M. Brnovich
United States District Judge